

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT AT NAIROBI
CAUSE NO. E667 OF 2022
FREDRICK OMONDI ADERO
CLAIMANT
v
UNIVERSITY OF NAIROBI
RESPONDENT**

**EMPLOYMENT AND LABOUR RELATIONS COURT
JUDGMENT**

This Cause was heard on 9 November 2023, 23 January 2024, 8 April 2024 and 3 June 2025. Fredrick Omondi Adero (the Claimant) and an acting Director, Human Resources with the University of Nairobi (the Respondent) testified.

2. The Claimant filed his submissions on 16 July 2025 (should have been filed and served before 6 July 2025), and the Respondent on 18 September 2025.
3. The Claimant identified the Issues in contention as:

(i) Whether the Respondent maliciously, unfairly, wrongfully and unlawfully dismissed the Claimant from employment vide a letter dated 16th April 2021?

EMPLOYMENT AND LABOUR RELATIONS COURT
(ii) Whether the Respondent unlawfully withheld the Claimant's remuneration, salary and/or emoluments?



(iii) Whether the Respondent unlawfully withheld the Claimant's appointment letter for the position of Director - Customer Experience and **NAIROBI** Information Centre?

(iv) Whether the Respondent unlawfully withheld any proper information or communication with the Claimant with effect from January 2021 to June 2021

when the Claimant was reinstated?

- (v) Whether the Claimant merits an award of Kshs 5,217,184/- as pleaded in the Statement of Defence together with interest at court rates?

- (vi) Whether the Claimant merits the costs of this Claim?

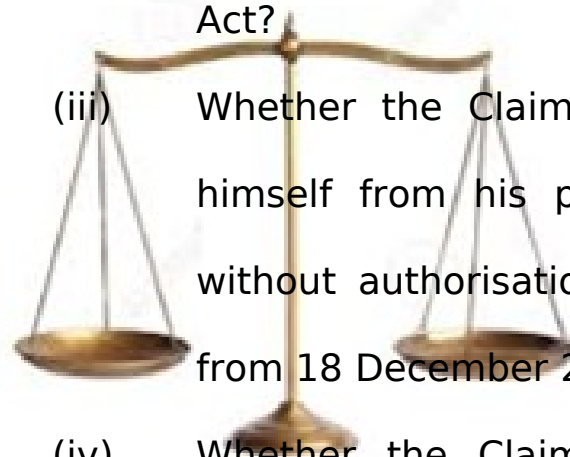
4. However, the Claimant did not address the Issues sequentially or directly in the body of the submissions except the question of unfair termination of employment.

5. The Respondent isolated the Issues for determination as:

- (i) Whether prior to 14 August 2019, the Claimant relinquished his appointment as the Deputy Director, Information & Technology Centre at the

Respondent or resigned from the
aforesaid position?

- (ii) Whether the Respondents Council
appointed the Claimant as
Director, Customer Experience
Information Centre in line
with section 35 of the Universities
Act?



- (iii) Whether the Claimant absented
himself from his place of work
without authorisation with effect
from 18 December 2020?

- (iv) Whether the Claimant forfeited
his contract of employment as

NAIROBI

Deputy Director, Information and
Technology Centre with effect
from 28th December 2020
pursuant to 2013 - 2017
Collective Bargaining Agreement
between the Respondents Council

and Kenya Universities Staff Union?

- (v) Whether the Claimant is entitled to the reliefs sought?
- (vi) Who shall bear the costs of the

6. The Court has considered the pleadings, evidence and submissions.

Unfair termination of employment

- 7. The Claimant alleged that the Respondent unfairly terminated his employment through a letter dated 16 April 2021.
- 8. The Claimant's case was that he took an emergency leave to end on 18 December 2020, and that he travelled to the United Kingdom for medical review and that he offered his services online from 21 December 2020 to 24 December 2020, whereupon the University took a Christmas break.

9. The Claimant also testified that he applied for annual leave to run from 18 January 2021 to 26 February 2021 and that his section/department supervisors approved the leave on 6 January 2021.

10. According to the Claimant, he resumed duty on 4 January 2021 after the Christmas break and that he could not meet with the Vice-Chancellor on 7 January 2021 because his son was down with COVID-19 and that this prompted the Vice-Chancellor to direct that his salary be stopped.

11. In the witness statement that was adopted as part of the evidence, the Claimant stated that he received a notice to show cause and that he responded to the letter.

12. The Claimant further testified that the Respondent sought to know his whereabouts in February 2021, he reported to work on 2 March 2021 before getting the dismissal letter

and that he appealed and was reinstated effective 1 July 2021.

13. The Respondent acknowledged that the Claimant applied for emergency leave, which was approved in December 2020, and that the Claimant travelled outside the country without the requisite permissions, and that despite the leave ending on 18 December 2020, the Claimant did not resume duty and that he failed to attend a meeting convened by the Vice-Chancellor on 7 January 2021 and 8 January 2021.

14. According to the Respondent's witness, the Claimant did not present any evidence of illness to explain the failure to attend the meeting and the application for annual leave was not approved.

15. The Respondent's witness further testified that the Respondent did not terminate the Claimant's employment, but he forfeited the

contract as contemplated by clause 22(e) of the collective bargaining agreement and that after an appeal and apology, the Claimant's contract was reinstated.

16. Clause 22(e) of the collective bargaining agreement between the Respondent and Kenya Universities Staff Union provides:

If a member of staff absents himself from his place of work without permission for ten consecutive days, he shall be deemed to have automatically forfeited his appointment. However, if such a member of staff subsequently gives an acceptable explanation for his absence, he may be reinstated in his former appointment or

17. The Respondent's letter of 16 April 2021 asserted that the Claimant had forfeited his contract because of unapproved absence of more than 10 days.

18. In other words, the Respondent was contending that the Claimant had repudiated the contract.

19. The Court finds that the issue was one of repudiation of the contract.

20. The Supreme Court of the United Kingdom addressed its mind to the doctrine of repudiation of contract in *Societe Generale, London Branch v Geys* (2012) UKSC 63. The Supreme Court endorsed the view that a repudiatory breach of an employment contract did not terminate the contract unless the innocent party elected to accept the repudiation (elective theory as opposed to the automatic theory).

21. This Court finds favour with the elective theory and finds that the letter of 16 April 2021 was not informing the Claimant of the termination of his contract but was evincing an intention by the Respondent to treat him

as having repudiated the contract, but after affording him a chance to explain.

22. The Claimant gave explanations which were accepted by the Respondent.

23. The question of unfair or unlawful termination of employment does not, therefore, arise. It was not actualised. It remained in the realm of an inchoate decisions.

Breach of contract

Service as Director - Customer

Experience and Information Centre

24. The Claimant claimed Kshs 2,098,227/- said to be remuneration for services offered as acting Director - Customer Experience and Information Centre from August 2018 to July 2019.

25. The Claimant testified that he was verbally instructed to assume office as Director - Customer Experience and Information Centre after a meeting of the Respondent's University

Executive Board and Senate on 2 August 2018, awaiting official communication.

26. The Claimant produced a letter dated 29 July 2019 addressed to the Vice-Chancellor seeking official communication on the appointment of the Claimant. The letter from the acting Vice-Chancellor dated 14 August 2019 appointing him as Director - Customer Experience and Information Centre for a 3-year tenure starting from the date of the letter.

27. To support his case, the Claimant also produced minutes of consultative meetings held on 26 April 2018, 9 May 2018, 29 May 2018, 31 May 2018 and 29 June 2018.

28. The Respondent contested the validity of the Claimant's appointment as Director, Customer Experience and Information Centre on the ground that under section 35(1)(a) and 37 of the Universities Act, the function of employing

staff was given to the University Council and the Council did not approve or appoint the Claimant.

29. The Respondent also relied on sections 11(r) and 22(4) and (5) of the University of Nairobi

Charter.

30. It is a fact that the acting Vice-Chancellor issued a letter dated 14 August 2019, appointing the Claimant as Director, Customer Experience and Information Centre.

31. The source of the Vice-Chancellor's mandate to make such an appointment was not disclosed to the Court.

32. There was no indication that the University Council was involved in the appointment. The appointment letter did not therefore create a legally binding agreement and the Court so holds.

33. Apart from the appointment letter dated 14 August 2019, the Claimant sought to rely on several minutes.

34. The Court cannot give any evidential weight to the minutes because they are consultative meeting minutes that were not signed and in any case, there is no minute recommending or appointing the Claimant as the Director, Customer Experience and Information Centre apart from appointment to chair technical committees.

35. The minutes of the University Executive Board and Senate on 2 August 2018 did not resolve to appoint the Claimant as a Director. The minutes show that the two entities only approved the establishment of a Customer Experience Centre.

36. Further, the Claimant did not show that the two entities had the mandate to appoint him as a Director.

37. The Court finds that the Claimant did not prove on a balance of probabilities that he was appointed verbally as a Director - Customer Experience and Information Centre in August 2018, or validly through the letter of 14 August 2018.

38. The finding herein renders the answer to issue 3 as posed by the Claimant in the negative.

Remuneration from August 2019 to August 2022

39. The Claimant also pleaded to be awarded Kshs 5,396,233/- said to be remuneration for the contract as Director from August 2019 to the end of the contract in August 2022.

40. The letter appointing the Claimant as Director - Customer Experience and Information Centre did not set out the remuneration or benefits attached to the office.

41. The Claimant wrote to the Respondent on 9 July 2020 seeking clarification on the remuneration and benefits.

42. Under cross-examination, the Claimant stated that he was on grade 14 and that what he was seeking was to be on salary from position of Deputy Director and to that of a Director.

43. The Respondent took the position that the Claimant was not entitled to any remuneration from 18 December 2020 to 30 June 2021 because he was absent without permission and was also deemed to have forfeited his contract.

44. The Respondent produced in Court a copy of the collective bargaining agreement for 2013 - 2017.

45. Clause 16.1 (a) of the Agreement provided that salary scales applicable would be those outlined in the 2010 - 2013 Collective Bargaining Agreement.

46. The Claimant did not place before the Court a copy of the latter Collective Bargaining Agreement, and the Court is unable to ascertain whether his schedule of the remuneration sought aligned with the 2010 - 2013 Agreement.

47. Although this head of the claim was in the nature of special damages, if the Claimant had laid an evidential foundation to the head of the claim, the Court would have invoked the provisions of section 20 of the Employment Act, 2007, in his favour. He did not meet the threshold of proof.

48. Regrettably, the Court is unable to allow the relief on the state of evidence.

Unlawful deductions

49. The Claimant made a plea for Kshs 147,084/- he contended was an unlawful deduction.

50. The Respondent explained the deduction as being in respect of the days the Claimant did

not work from 18 December 2020 to 31 December 2020.

51. The Claimant did not return to the country after the lapse of his emergency leave. He claimed he was working online and produced a series of emails to show that he was working.

52. The Respondent accepted the Claimant's explanations for his absence and reinstated him to his position, and in light of this, the Court finds that the deduction was unlawful.

Withholding of information

53. The Claimant did not lay an evidential basis for this Issue, nor did he seek any relief if the Court were to find in his favour.

54. The Court is unable to examine this Issue or grant any relief.

Conclusion and Orders

55. Flowing from the above, the Court finds that apart from the head of claim for unlawful

deduction of salary, the Claimant did not prove his case, rendering the Cause without merit.

56. The Claimant is awarded Kshs 147,084/-. The other claims are dismissed.

57. The Claimant has succeeded only on one issue, and the Court orders each party to bear own costs.

Delivered virtually, dated and signed in Nairobi on this 13th day of November 2025.



Appearances

For Claimant

Achola Jaoko &
Co. Advocates

For Respondent

CS Fredrick Collins
Omondi, Director,
Legal & Corporate
Board Services

Court Assistants

Wangu

NAIROBI